



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 10, 2020

Katherine Wisinski
Assistant City Attorney
City of Brentwood
150 City Park Way
Brentwood, CA 94514

Re: Your Request for Advice
Our File No. A-20-085

Dear Ms. Wisinski:

This letter responds to your request for advice on behalf of Brentwood City Councilmember Claudette Staton regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Under the Act, may Councilmember Staton take part in governmental decisions pertaining to a city development project that would involve the construction of hundreds of new homes, among other significant developments, and potentially affect property views, traffic levels, and air quality, given that she owns real property less than 1000 feet from the project site?

CONCLUSION

No, given the scope and impacts of the project, as well as the proximity of Councilmember Staton’s real property, it is reasonably foreseeable that the project would have a material financial effect on Councilmember Staton’s property by changing its market value and income producing potential, and air quality. Accordingly, Councilmember Staton is disqualified from taking part in project decisions under the Act, and consequently must recuse herself from those decisions.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS AS PRESENTED BY REQUESTER

Brentwood (“City”) is a general law city in Contra Costa County. Although the majority of the city is built out, discrete undeveloped sites remain, including an approximately 137-acre site in the northwest area of the community (the “Project Site”). West Coast Home Builders, Inc. and Discovery Builders, Inc., have submitted a series of applications to the City of Brentwood to develop the Project Site as follows:

- Development of approximately 252 single-family homes (the “Bridle Gate Subdivision”);
- Development of a roughly 14-acre parcel north of Sand Creek with up to 258 multi-family homes (the “Enclave at Sand Creek”);
- Development of an approximately 11-acre parcel in the middle of the Bridle Gate Subdivision as either (1) a public elementary school site, or (2) as an additional 63 single-family homes, in the event a school is not developed at this location;
- Extension of Sand Creek Road, a major arterial, from the eastern border of the project through the Project Site to its western boundary;
- Dedication of roughly 4 acres of public parkland to the City of Brentwood for neighborhood parks;
- Continued designation and use of approximately 20 acres as Open Space that will not be developed; and
- Development of infrastructure necessary to support the Project components identified above, including improvements to and new construction of transportation, water, wastewater, and electrical infrastructure (e.g., stormwater treatment facilities).

Collectively, these elements constitute the “Project.”

The City’s Planning Commission will review the requested entitlements at a public hearing and make a recommendation to the City Council, in accordance with the State Planning and Zoning Law and the Brentwood Municipal Code. After that hearing is concluded, the requested entitlements will be presented to the City Council, along with the Planning Commission’s recommendation, for the Council’s determination as to whether to approve, deny, or request modifications to the Project.

The City Council will be tasked with several decisions related to the proposed Project. The Project’s environmental review materials will include an Environmental Impact Report, which the City Council would need to certify if it decides to approve the Project. The Project would also require the City Council’s approval of a General Plan Amendment, a Zoning Amendment, a Vesting Tentative Subdivision Map, Design Review, and Development Agreement, all of which are discretionary approvals.

Councilmember Staton owns a home within the Brentwood Hills development, a residential neighborhood immediately south of the Project Site. At their nearest point, the boundaries of her parcel are approximately 703 feet from the Project Site. The Draft Environmental Impact Report (DEIR) has estimated that the Project will generate between 14,829 and 15,439 new daily vehicular traffic trips, some portion of which may be distributed along roadways near Councilmember Staton’s home. In addition, the DEIR finds that development of the project will potentially alter

views of nearby hills and geographic features from the Councilmember's neighborhood, though it does not analyze the view from each parcel. The DEIR likewise anticipates that project construction noise levels could exceed daytime ambient noise levels in the Councilmember's neighborhood during busy periods of construction near the site's southern boundary and requires limitation of construction activities to daytime hours to address this increase. Finally, the DEIR has determined that the project will result in emissions of certain air contaminants (oxides of nitrogen) in excess of the Bay Area Air Quality Management District's thresholds of significance, and mitigation is imposed to reduce such emissions.

In a follow-up email, you sent a copy of the DEIR. While the DEIR states that overall the Project "would result in less-than-significant impacts related to aesthetics," it also notes the Project "would change the existing visual setting from open grazing land to a suburban area consisting of a single-family subdivision, a multi-family apartment complex, future commercial uses, and associated improvements." (DEIR, p. 4.0-2.) The DEIR also indicates the Project would "[c]onflict with or obstruct implementation of the applicable air quality plan during project operation . . . and despite implementation of all feasible mitigation measures, the impact is significant and unavoidable." (DEIR, Table. 2-1, p. 2-8.) "Thus," the DEIR explains, "implementation of the proposed project could generate long-term operational criteria air pollutant emissions in excess of thresholds, and the project could contribute to the region's nonattainment status of ozone and/or violate an air quality standard." (DEIR, pp. 4.1-34-35.)

In another follow-up email, you clarified that the view from Councilmember Staton's property includes a view from her backyard of an open space that rises to a hilltop, but Councilmember Staton does not know whether that hilltop is part of the development project site or is part of the open space that divides her neighborhood from the development project site.

ANALYSIS

Under Section 87100 of the Act, "[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." "A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family," or on certain specified economic interests. (Section 87103.) Among those specified economic interests is any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. (Section 87103(b).)

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, "[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6)." Councilmember Staton's real property interest is not explicitly involved in the governmental decisions at issue.

Where an official's economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, "[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable."

Under Regulation 18702.2(a)(8), the reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is also material whenever the governmental decision involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel's:

- (A) Development potential;
- (B) Income producing potential;
- (C) Highest and best use;
- (D) Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or
- (E) Market value.

The DEIR is not clear whether the Project would substantially alter the noise levels at, or views from, Councilmember Staton's property, nor does Councilmember Staton know whether the open space viewed from her property includes a portion of the project site. It is clear, however, that the Project would substantially affect the air quality of nearby property, including Councilmember Staton's. As the DEIR states, "implementation of the proposed project could generate long-term operational criteria air pollutant emissions in excess of thresholds, and the project could contribute to the region's nonattainment status of ozone and/or violate an air quality standard." (DEIR, pp. 4.1-34-35.) Additionally, given the large scope of the Project (involving 252 new single-family homes, 258 multi-family homes, and a potential new elementary school, among other changes), combined with the close proximity of Councilmember Staton's real property to the Project site, it appears reasonably foreseeable that the Project would impact the market value and income producing potential of the property. Accordingly, under the Act, it is reasonably foreseeable the Project would have a material financial effect on Councilmember Staton's economic interest, and she is disqualified from taking part in the governmental decisions pertaining to the Project.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel



By: Kevin Cornwall
Counsel, Legal Division

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